

REQUIRING ENLISTED MEMBERS OF THE ARMED FORCES TO MAKE UP TIME LOST DURING ENLISTMENTS

JUNE 14, 1956.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BROOKS of Louisiana, from the Committee on Armed Services,
submitted the following

REPORT

[To accompany H. R. 8407]

The Committee on Armed Services, to whom was referred the bill (H. R. 8407) to require enlisted members of the Armed Forces to make up time lost during enlistments, having considered the same, report favorably thereon with amendments and recommend that the bill as amended, do pass.

The amendments are as follows:

Page 1, line 10, strike the words “, if convicted,”.

Page 2, strike the language on lines 21 and 22 and insert in lieu thereof the following:

(4) Clause (3) and the last sentence of subsection (a), and subsections (b) and (c), of section 367 of Title 14, United States Code.

PURPOSE OF THE BILL

H. R. 8407 is designed to establish a law, uniform in its application to the Army, Navy, Air Force, Marine Corps, and Coast Guard, which will make an enlisted man of any of these services liable to make up time lost by reason of his misconduct.

The act of May 21, 1928 (34 U. S. C. 183a) provides that enlisted men in the naval service who absent themselves without authority for more than 1 day or are confined for more than 1 day under sentence or are confined while awaiting trial and disposition of the case if the trial results in conviction, may be permitted to serve for such period as shall, with the time served prior to such absence or confinement, amount to the full term of the enlistment.

The statute which applies to enlisted personnel of the Army and Air Force (10 U. S. C. 629) on the other hand, provides that an en-

listed man shall be liable to make up time lost under the same circumstances as those specified in the Navy law. The law applicable to the Coast Guard (14 U. S. C. 367) is, as in the case of the Navy, permissive rather than mandatory.

In the case of all of the services, including the Coast Guard, the applicable law requires the making up of time in excess of 1 day lost by reason of injury, sickness, or disease resulting from the intemperate use of drugs or alcoholic liquors, or other misconduct.

H. R. 8407 would repeal the existing provisions of law affecting each of the services and would provide completely uniform provisions for the enlisted men of all services. Its provisions will be substantially the same as those which now are applicable to the Army and the Air Force.

It is considered that the enactment of H. R. 8407 would serve as a deterrent against the commission of offenses by Navy, Marine Corps, and Coast Guard personnel since it would transfer the option as to whether lost time should be added to the normal term of enlistment from the offender to the service of which he is a member.

More important, however, is the fact that it would make possible the restoration to duty of many enlisted persons who could not under the present naval law, as interpreted by the Comptroller General, be restored.

In meritorious cases the Navy and the Marine Corps afford persons sentenced to punitive discharges the opportunity of earning a discharge under honorable conditions by performing further honorable service.

This opportunity is given to those who show by their conduct and service motivation that they may be suitable for retention in the service. In such a case the punitive discharge is suspended at the request of the enlisted man and he is returned to active duty after completing his sentence. If he satisfactorily serves the period of his probationary service the man's punitive discharge is remitted. It happens not infrequently that a man who is considered to be deserving of a chance to earn a discharge under honorable conditions is denied that opportunity by reason of the expiration of his enlistment.

As previously mentioned, the law affecting the naval service permits an enlisted man to make up lost time due to absence or confinement but the Comptroller General has ruled that to avail himself of the opportunity he must make application therefor before discharge or expiration of enlistment and that his application must be approved before his enlistment expires.

Thus a man who would ordinarily be placed on probation and allowed to prove his eligibility for discharge under honorable conditions can be deprived of that most desirable opportunity by the fortuitous circumstance of the date of expiration of his enlistment. If it were possible to extend his enlistment by the period of lost time he would normally have sufficient service remaining after his release from confinement to complete a probationary period.

The law affecting the Army and Air Force, which makes a man liable to make up the time lost rather than permitting him so to do, does not require the submission and approval of an application before his enlistment expires. Under that law, a man who is serving a sentence at the time his enlistment expires can be returned to duty upon release from confinement for the purpose of making up the time he has not served during his enlistment.

He can serve a probationary period while making up that lost time and, if he proves his worth, earn a discharge under honorable conditions. Since the Navy is not always in a position to determine a man's eligibility for probation before his enlistment expires, the Navy's clemency procedure would benefit by the enactment of H. R. 8407 which will place all of the services on the same basis with respect to making up lost time.

The committee amended the bill in two respects, both of which are technical and clarifying amendments.

COST AND BUDGET DATA

Enactment of this bill would result in no increase in the budgetary requirements of the Department of Defense, since persons retained on active duty would be part of the authorized strength of the appropriate service.

DEPARTMENT RECOMMENDATIONS

The Department of Defense recommends enactment of H. R. 8407 and the Bureau of the Budget interposes no objection. The Department letter follows:

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, D. C., January 4, 1956.

HON. SAM RAYBURN,
Speaker of the House of Representatives,
Washington, D. C.

MY DEAR MR. SPEAKER: There is forwarded herewith a draft of legislation to require enlisted members of the Armed Forces to make up time lost during enlistments.

This proposed legislation is a part of the Department of Defense legislative program for 1956 and the Bureau of the Budget has advised that it has no objection to the submission of this proposal for the consideration of the Congress. The Department of the Navy has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by the Congress.

PURPOSE OF THE LEGISLATION

The act of May 21, 1928 (34 U. S. C. 183a) provides that enlisted men in the naval service who absent themselves without authority for more than 1 day or are confined for more than 1 day under sentence, or are confined while awaiting trial and disposition of the case, if the trial results in conviction, may be permitted to serve for such period as shall, with the time served prior to such absence, amount to the full term of their enlistment.

It is the policy of the Department of the Navy to permit court-martial prisoners who are suitable and evince a desire therefor, to be restored to duty upon completion of their full confinement or a portion thereof so as to earn the right to a discharge under honorable conditions through further useful naval service. It has consistently been held that when enlistments are required by law to be for a prescribed period, they necessarily expire with the last day of the term, unless there existed some law when the contract was entered into providing for a

contingent prolongation of the term. The act of May 21, 1928, does not mandatorily require completion of enlistments which it affects, and therefore does not enable Navy or Marine Corps personnel who complete confinement after expiration of their enlistments to be conditionally restored to duty, as is the case with the corresponding statute applicable to the Army and the Air Force (act of June 4, 1920, ch. 227, subch. II, sec. 1; 10 U. S. C. 629).

The problem stated does not exist within Army and Air Force since members are required to make up time lost. In the interest of uniformity in legislation, however, and with appropriate repeal of existing authority, the proposal is drafted to cover the military departments and the Coast Guard. Further, with respect to Army and Air Force, the proposal makes its application to "inductees" as well as "enlistees" unmistakably clear.

This proposal provides authority for requiring the completion of enlistments where time is lost in cases of desertion, absence without leave, confinement under sentence or awaiting trial where trial results in conviction, or absence from duty because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from misconduct.

Enactment of this legislation would permit all classes of prisoners to be considered in a rehabilitation program; would minimize the number of disciplinary cases in a nonpay status; would simplify the administration of personnel in this category; and would greatly contribute to reduction of absences, when offenders recognize that such time lost must be made good to complete their enlistments.

COST AND BUDGET DATA

Enactment of this proposal would result in no increase in the budgetary requirements of the Department of Defense since persons retained on active duty would be part of the authorized strength of the appropriate service.

Sincerely yours,

ALBERT PRATT,
Acting Secretary of the Navy.

In compliance with paragraph 3 of rule XIII of the Rules of the House of Representatives, there is herewith printed in parallel columns the text of provisions of existing laws which would be repealed or amended by the various provisions of the bill.

EXISTING LAW

Section 1 (article 107) of the Act of June 4, 1920 (ch. 227, 41 Stat. 809), as amended:

"SOLDIERS TO MAKE GOOD TIME LOST.—Every soldier who in an existing or subsequent enlistment deserts the service of the United States or without proper authority absents himself from his organization, station, or duty for more than one day, or who is confined for more than one day under sentence, or while awaiting trial and disposition of his case, if the trial results in conviction, or through the intemperate use of drugs or alcoholic liquor, or through disease or injury the result of his own misconduct, renders himself unable for more than one day to perform duty, shall be liable to serve, after his return to a full-duty status, for such period as shall, with the time he may have served prior to such desertion, unauthorized absence, confinement, or inability to perform duty, amount to the full term of that part of his enlistment period which he is required to serve with his organization before being furloughed to the Army reserve."

The proviso of the fourth paragraph under "Officers for Engineering Duty Only" of the Act of August 29, 1916 (ch. 417, 39 Stat. 580), as amended:

"*Provided*, That an enlistment shall not be regarded as complete until the enlisted man shall have made good any time in excess of one day lost on account of injury, sickness or disease resulting from his own intemperate use of drugs or alcoholic liquors, or other misconduct."

THE BILL

SEC. 2. The following are repealed:

(1) Section 1 (article 107) of the Act of June 4, 1920 (ch. 227, 41 Stat. 809), as amended by section 6 (a) of the Act of May 5, 1950 (ch. 169, 64 Stat. 145).

(2) The proviso of the fourth paragraph under "Officers for Engineering Duty Only" of the Act of August 29, 1916 (ch. 417, 39 Stat. 580), as amended by the Act of July 1, 1918 (ch. 114, 40 Stat. 717 (2d par.)).

EXISTING LAW

THE BILL

The Act of May 21, 1928 (ch. 650, 45 Stat. 620):

(3) The Act of May 21, 1928 (ch. 650, 45 Stat. 620).

"That every enlisted man in the naval service who, without proper authority, absents himself from his ship, station, or duty for more than one day, or who is confined for more than one day under sentence, or while awaiting trial and disposition of his case, if the trial results in conviction, may be permitted to serve, after his return to a full-duty status, for such period as shall, with the time he may have served prior to such unauthorized absence or confinement, amount to the full term of his enlistment."

Section 367 (a) (3), (b), and (c) of title 14, United States Code:

(4) Section 367 (a) (3), (b), and (c) of title 14, United States Code.

"§ 367. *Detention beyond term of enlistment.*

"(a) Under regulations prescribed by the Secretary, an enlisted man may be detained in the Coast Guard beyond the term of his enlistment:

* * * * *

"(3) while awaiting disciplinary action or trial and disposition of his case; or

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"(b) Any enlisted man who, without proper authority, absents himself from his ship, station, or duty for more than one day, or who is confined for more than one day under sentence, or while awaiting trial and disposition of his case, if the trial results in conviction, may be permitted to serve, after his return to a full duty status, for such period as shall, with the time he may have served prior to such unauthorized absence or confinement, amount to the full term of his enlistment.

"(c) An enlistment in the Coast Guard shall not be regarded as complete until the enlisted man shall have made good any time

EXISTING LAW

lost on account of injury, sickness, or disease resulting from his own intemperate use of drugs or alcoholic liquors, or other misconduct."

Section 367 (a) (4) and (5) of title 14, United States Code:

"§ 367. *Detention beyond term of enlistment.*

"(a) Under regulations prescribed by the Secretary, an enlisted man may be detained in the Coast Guard beyond the term of his enlistment:

* * * * *

"(4) during a period of war or national emergency as proclaimed by the President, and, in the interest of national defense, for a period not to exceed six months after the end of the war or the termination of the emergency; or

"(5) for a period of not exceeding thirty days in other cases whether or not specifically covered by this section, when essential to the public interests, and the determination that such detention is essential to the public interests, made in accordance with regulations prescribed by the Secretary, shall be final and conclusive.

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THE BILL

SEC. 3. Section 367 (a) of title 14, United States Code, is amended by renumbering clauses "(4)" and "(5)" as "(3)" and "(4)", respectively.

